



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



DEC 11 2000

File: EAC-98-075-52468

Office: Vermont Service Center

Date:

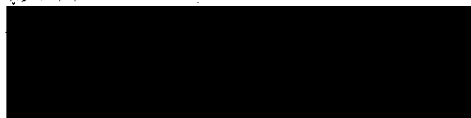
IN RE: Petitioner:

Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a pandit. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a twenty-seven-year-old single male native and citizen of India. The beneficiary entered the United States as a

visitor on December 28, 1996 and his authorized period of admission expired on January 5, 1997. On Part 4 of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the petitioner indicated that the beneficiary had engaged in "Hindu Relig. volunteer work" subsequent to his entry into the United States.

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 12, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 12, 1996 to January 12, 1998.

In a letter dated November 9, 1997, the petitioner stated that the beneficiary "has been volunteering his time for the past three years." On March 25, 1998, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary "worked full-time as a Priest at [REDACTED] in [REDACTED] in Ludhiana, India . . . for two years before coming to the United States."

On appeal, the petitioner submits a letter from a representative of the [REDACTED] in India who indicates that the beneficiary "has undertaken the full time position of [REDACTED] . . . beginning from 25th September 1994 [until] 21st October 1996." Counsel argues that the regulations "nowhere state that the two years of qualifying experience need be in a paid position . . . Neither is there any language in the statute that would seem to support the position that volunteer service does not qualify as work experience." Counsel's contention that neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying is correct. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between

someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from January 12, 1996 to January 12, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.